IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.932 OF 2005

Mr.Paresh Manilal Shah. ..Petitioner.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Ms.Manorama Mohanty with Ms.Simeen T. Shaikh for S.K.Srivastav & Co.for petitioner.

Ms.S.V.Gajare,APP for State.

Mr.Shailesh Kantharia with Rupali Bhosale, for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 24, 2005.

P.C. :

1. Heard counsel for the parties.

2. Ms.S.V.Gajare, APP waives notice for respondent No.1 and Mr.Shailesh Kantharia waives notice for respondent No.2.

3. As short question involves in this petition, the same is taken up for hearing forthwith by consent.

4. This petition questions the correctness of two orders dated 18th March, 2004. The first order

is of restoring the complaint to the file, which was dismissed for default. On the earlier occasion on the same day, the trial court proceeded to issue process and restored complaint.

5. The short point to be considered is whether the Magistrate has power to entertain application for restoration of complaint. The answer is plainly in negative. In that sense the order passed by the Magistrate on 18th March, 2004 entertaining the application preferred by the complainant for restoration of the complaint which was dismissed for default on earlier occasion is without jurisdiction. That order will have to be set aside. As necessary consequence, the order issuing process on the same day by the Magistrate will have to be treated as effaced from record. Accordingly, this petition succeeds.

6. It is however, made clear that it will be open to the respondent complainant to take recourse to such remedy as may be permissible by law against the order dated 21st January, 2005 dismissing the complaint for default. Those proceedings will be considered on its own merit in accordance with the law.